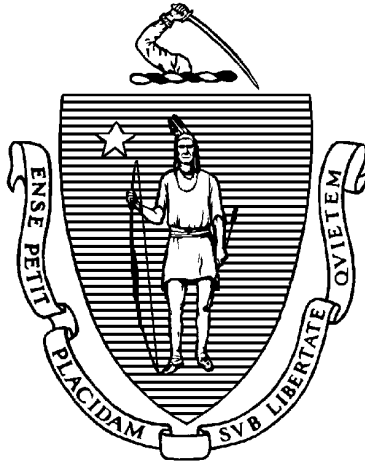


Massachusetts Division of Insurance



Report to the Joint Committee on Financial Services of Efforts Made to Facilitate
the Transition of Exclusive Representative Producers to Voluntary Agents

July 13, 2009

Nonnie S. Burnes
Commissioner of Insurance

EXECUTIVE SUMMARY

The Division of Insurance (Division) began to assist Exclusive Representative Producers (ERPs)¹, and all other agents, with their transition to the Massachusetts Automobile Insurance Plan (MAIP) two years ago. We held many meetings with groups of agents and representatives from agents' groups and made telephone calls to ERPs as well as other agents. Commonwealth Automobile Reinsurers (CAR) and the Massachusetts Association of Independent Agents (MAIA) have also provided invaluable assistance in educating these agents how best to make the transition to the MAIP.

Our campaign to assist ERPs in their effort to obtain voluntary contracts from insurers intensified beginning in March 2009. I met personally with all interested ERPs during two public meetings, in March and May, and in March I met with a group of insurers to encourage them to offer these contracts generously. Two members of my senior staff spoke regularly with some of the larger insurers to discuss all concerns deterring them from offering contracts to ERPs. We worked with these insurers to resolve some of these concerns, where possible, and continued our campaign of encouragement, support and facilitation.

I appointed an ombudsperson within the Division to talk with all ERPs about their concerns and to inform them about any changes in these areas. The Division responded to every telephone call and piece of correspondence from ERPs and ensured that concerns raised by certain groups who were speaking on behalf of groups of ERPs were studied and addressed by CAR.

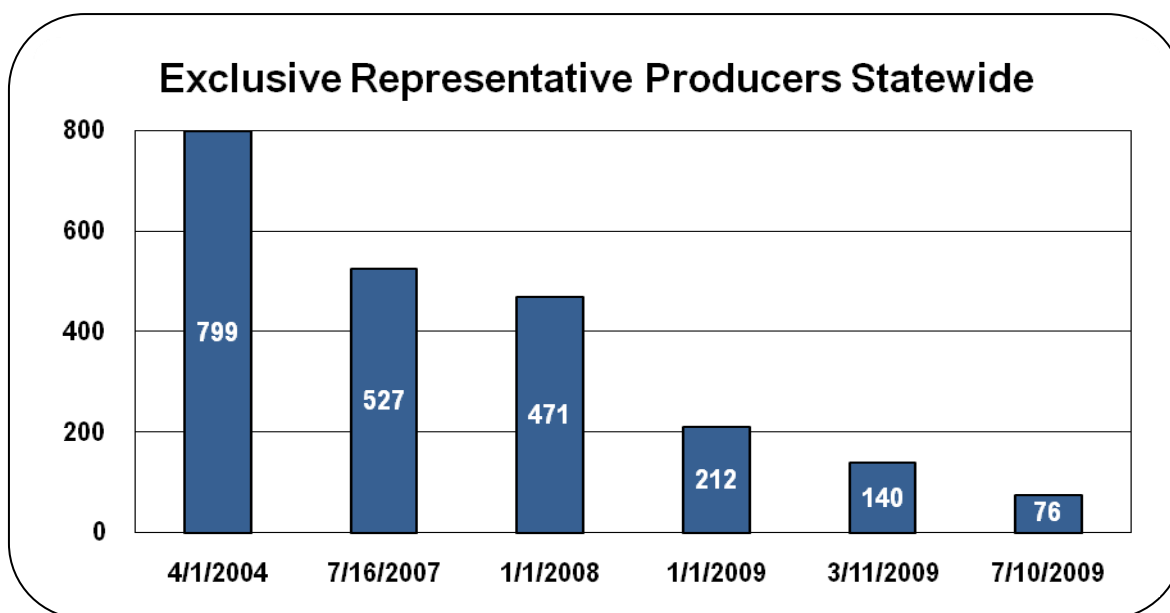
The Division also met several times with CAR staff and communicated with them regularly to remedy as many issues as possible through the residual market rules and as part of CAR's administrative procedures. The Division, through CAR, tracked every remaining ERP and the number of ERPs awarded voluntary contracts on a weekly basis. I formally directed CAR to address certain issues raised by the ERPs. CAR studied the issues and proposed corresponding changes to the MAIP rules, many of which I approved in order to assist the ERPs and their affected customers during this transition period. I also proposed amendments to one of

¹ "ERPs" legally ceased to exist on April 1, 2009, when the door to the former reinsurance pool of the residual market closed and the MAIP became the sole residual market for private passenger automobile insurance in Massachusetts. Only one form of agents, Assigned Risk Producers, now service the residual market. The term "ERP" is used throughout this report for the ease of reference to describe these agents who were appointed previously to one insurer.

the Division's regulations to ease certain procedures regarding pre-insurance inspections of motor vehicles that were specifically raised by the ERPs.

The Division additionally commenced an outreach program in June to talk with each of the remaining ERPs at that time, 84 (already a significant decrease from the 140 in early March), to determine whether we were unaware of any other issues about which we could help. We successfully reached the majority of these ERPs and talked extensively with them. We followed up three weeks later and spoke with them again to notify them about the many recent changes the Division had made to certain issues and rules that they had found troublesome.

Our efforts have continued to produce significant results. We were able to create a backdrop against which insurers became more favorably disposed to offer these contracts. We had 799 ERPs when the seeds of the MAIP were first planted in early 2004. When I issued my decision on July 16, 2007, formally ushering in the MAIP and managed competition, we had 527 ERPs. We had 471 ERPs on January 1, 2008, and 212 one year later on January 1, 2009. As of March 11th, when the Division launched its aggressive campaign to assist the remaining ERPs to obtain voluntary contracts, we had 140 ERPs.² I am pleased to announce that as of today, July 13, 2009, we only have 76 ERPs. This is a reduction of 46% from when the Division began this aggressive effort in March.



² Some of these numbers differ slightly from numbers the Division previously cited in other forums based on CAR's statistics. CAR's initial calculations may have not been current at that time. The numbers offered in this Report are current and final.

I have highlighted below some of our many efforts to facilitate the issuance of voluntary contracts to so many ERPs. Details regarding each of these efforts are provided within this Report.

- Identify an ombudsperson within the Division for all ERPs' communications and concerns
✓ *Completed on March 11, 2009*
- Ensure at least one premium is available at the time of application so that agents can quote the amount of down payment automatically
✓ *Completed in April 2009*
- Hold meetings with interested ERPs to discuss their concerns and to assist them with obtaining voluntary contracts
✓ *Completed on May 13, 2009*
- Lower the down payments for new and renewal business in the MAIP
✓ *Completed in July 2008 and further reduced on June 19, 2009*
- Ease the pre-inspection requirements for all "new" business in both the voluntary and residual markets and ensure that the vehicles of the former ERPs' existing customers need not undergo a pre-insurance inspection if the customers continue coverage through the MAIP during the transition period
✓ *Completed in the MAIP on June 19, 2009 and anticipate completion in the voluntary market by the end of July 2009*
- Ease the MAIP requirement that agents obtain copies of drivers' licenses for all new applications in the MAIP
✓ *Completed on June 19, 2009*
- Compel insurers to pay commissions more quickly
✓ *Completed on June 19, 2009*
- Clarify rules to prevent insurers from non-renewing "clean-in-three" business if a deferred operator on the policy is not "clean-in-three"
✓ *Proposed such relief to CAR in April 2009 and completed on June 26, 2009*

I am optimistic that some of these remaining 76 ERPs will obtain voluntary contracts, or brokerage agreements, over the next few months. I am realistic that not every one of them will have this opportunity. Even those who are unable to secure such contracts, however, will be able

to continue their businesses. They will be able to write their policies through the MAIP, our residual market, and continue to receive their commissions from the insurers to whom their customers are assigned. And, most importantly, every one of their customers, our consumers, will continue to be able to obtain motor vehicle insurance in our market.³

³ Some individuals may not be able to obtain insurance for reasons identified in the laws, such as non-payment of premiums..

I. INTRODUCTION

Chapter Nine of the Acts of 2009, *An Act Relative to an Appeal of Insurance Premium Surcharges under Managed Competition* (the Act), became law on April 15, 2009. Section Three of the Act states that the Commissioner of Insurance (the Commissioner) shall file a report with the joint committee on financial services regarding her efforts “to facilitate the transition of exclusive representative producers to voluntary agents and the outcome of those efforts...” The Act also states that the Commissioner shall report on insurance premium payment plans and requisite down payments in the voluntary and residual private passenger automobile insurance markets. This Report details my, and my staff’s, extensive efforts to meet these goals.

II. BRIEF HISTORY OF THE ERP

ERPs were agents⁴ who were guaranteed appointment to at least one insurance company under the previous reinsurance residual market system in Massachusetts.⁵ They were created to remedy a perceived problem regarding the availability of private passenger automobile insurance coverage in certain areas of the state, particularly urban areas, in which insurers were not writing sufficient amounts of business. ERPs quickly grew in number and the residual market exploded.

There were a total of 1,675 ERPs in 1988 and approximately 70% of all policies were ceded to the residual market---meaning the majority of consumers had no choice of insurer. Legislative reforms enacted that year were intended to reduce the overpopulation of this market and the excessive number of ERPs. The legislation was successful and the number of ERPs and population in the residual market gradually diminished.

By early 2004, when the seeds of the MAIP were planted, 799 ERPs remained. These 799 ERPs serviced 25% of the market. The Division, in cooperation with CAR, initiated affirmative plans to reduce the number of ERPs with the goal of eliminating the dual agency system in Massachusetts (ERPs and independent agents) in order to transition to an assigned risk plan, the MAIP.

There were 570 ERPs on January 1, 2007. The Division continued its repeated efforts to transition the residual market to the MAIP and towards securing voluntary contracts for the ERPs

⁴ “Producers” is the current legal term to describe “agents” and “brokers.” The traditional term “agents” is used throughout this report for ease of reference.

⁵ Section 17 of Chapter 241 of the Acts of 1983.

or encouraging the merger of these agencies. My efforts over the next two and one-half years included various meetings throughout the Commonwealth geared towards educating all agents, including ERPs, about the MAIP and about how best to adapt to such changes. I also met with groups of insurers to encourage them to offer voluntary contracts to the ERPs. The number of ERPs continued to decline. On January 1, 2008, the market held 471 ERPs and by January 1, 2009, it was down to 212.

This year we gave a final push to assist the remaining ERPs in their transition to the MAIP. In a letter to me of February 10, 2009, the Pacific Insurance Agency stated that there were 172 ERPs remaining. On March 11, 2009, when I met with a large group of ERPs, only 140 remained. I implemented many new efforts to assist these final ERPs in their transition to the MAIP and to facilitate their obtaining voluntary contracts, all of which are detailed in this report.

I met with a large group of insurers in March 2009 to encourage them to offer as many voluntary contracts as possible to ERPs. I distributed an updated list of ERPs with the ERPs' loss ratios, volumes and locations to assist these insurers with their efforts to review these ERPs and to offer them voluntary contracts. Several of the insurers commented that they had not received such a list in several years and found it to be very helpful.

Two of my senior staff members regularly telephoned some of the larger insurers as part of an effort to facilitate the offering of more voluntary contracts. This staff communicated issues they were hearing from the ERPs to insurers and helped some insurers to work through particular legal or regulatory issues that may have been hindering them from offering voluntary contracts.

The empirical results of these efforts show a dramatic positive effect. By the time of my second public meeting with the ERPs on May 13, 2009, the number of ERPs had dwindled to 96. My staff's continuing daily efforts to assist these ERPs has, of the time of this report, resulted in a total of 76 remaining ERPs---the lowest number of ERPs in the residual market since shortly after the introduction of the ERP.

III. BRIEF HISTORY OF THE MAIP

The seeds of the MAIP were first planted in 2004, when there were 799 ERPs. The transition from the reinsurance pool in the residual market to an assigned risk plan became necessary because the reinsurance pool generated an inequitable apportionment of losses among the insurers, thereby violating the residual market's enabling statute. This system also resulted in

some of the highest bodily injury and property damage losses in the country, a bloated residual market with one of the largest deficits nationally and the fourth highest insurance premiums in the United States. The dual agency system, with the guaranteed appointments of ERPs and their books of business, contributed significantly to these inequities. The Division, therefore, commenced its reform of the residual market to an assigned risk plan at that time.

I studied the initial efforts to transition our residual market to the MAIP and, on July 16, 2007, issued a decision officially ushering in the MAIP, effective April 1, 2008.⁶ I also issued a companion decision on that same day implementing “managed competition” in the private passenger automobile insurance market. The Division has held numerous public hearings regarding the MAIP and the Division’s various amendments to the MAIP’s rules at which numerous entities and individuals, including ERPs, have testified. The MAIP’s first transition year began on April 1, 2008. We are in the second year of transition, and the MAIP will be fully implemented by March 31, 2010.

IV. THE COMMISSIONER’S EFFORTS TO EDUCATE AND ASSIST THE AGENTS THROUGHOUT THE STATE REGARDING THE MAIP AND MANAGED COMPETITION

I attended various meetings throughout the state as part of my effort to educate all agents, including ERPs, regarding the MAIP and managed competition. Between announcing the gradual implementation of the MAIP in July of 2007 and the present, I have traveled the Commonwealth; meeting with agents in, among other locations, Brockton, Framingham, Newton, Plymouth, Springfield and Westport to speak directly with them about these changes. Additionally, I met with and communicated with the executives of MAIA throughout this process.

I also encouraged CAR in late 2007 and 2008 to work more closely with the agents, including the ERPs, to educate them about the MAIP. CAR held several live webinar-style statewide training sessions in conjunction with MAIA in late February and early March of 2008. CAR also offered an on-line MAIP policy application tutorial in January of 2008 and in-house agency introductory training classes in February of 2008. Fraud training classes became

⁶ The first transition year to the MAIP began on April 1, 2008. The old reinsurance pool continued to operate for some business in the residual market simultaneous with the opening of the MAIP for other residual market business. The MAIP became the sole residual market mechanism as of April 1, 2009, and is in its second transition year.

available in September of 2007 and MAIA held numerous sessions between September 2007 and January 16, 2008 (deadline for complying with fraud training in MAIP rules).

V. MARCH 11, 2009 MEETING WITH ERPs IN GARDNER AUDITORIUM

I attended a meeting at the Gardner Auditorium in the State House with approximately 100 ERPs and voluntary agents on March 11, 2009 at the request of several legislators. There were 146 ERPs at the time of this meeting. I listened carefully to the ERPs' numerous issues and responded immediately with several measures to address some of their concerns.

The most significant complaints voiced by ERPs at this meeting included beliefs that: (1) the insurance companies were unfairly denying the ERPs voluntary contracts; (2) the administrative burdens of the MAIP were too great; and (3) the ERPs' clients would not receive adequate notice that their insurers intended to non-renew their policies.

1. Unfair Denial of Voluntary Contracts to ERPs

Some of the ERPs stated that the insurers unfairly denied them voluntary contracts. Some asserted that the insurers to whom they had been appointed previously had represented that they intended to offer them voluntary contracts and then failed to do so. These ERPs felt betrayed by these perceived misrepresentations. Other ERPs claimed that insurers were not offering them contracts because of their locations in certain urban areas and the communities that they served. The Division had been monitoring this issue carefully since the onset of the MAIP. We knew that the ERPs were concentrated in the urban areas to begin with but we looked at a number of urban areas, e.g. Boston, Worcester, Springfield, Lowell, to assure ourselves that the insurers were not disadvantaging any one community over another. We determined that the insurers were giving voluntary contracts to ERPs in all communities at roughly the same rate.

2. Administrative Burdens:

Lack of a Uniform MAIP Application

ERPs stated that they felt crippled by the prospect that they would have to learn all of the distinct information associated with each insurer in connection with completing a new application for the MAIP when each of their customers is assigned to a new insurer. This concern was well founded, but did not mature into a real issue. CAR had made the uniform MAIP application available to all agents online in early 2008. No agent will have to use application forms unique to any one insurer when placing business in the MAIP. All agents

writing business in the MAIP only must use one, uniform application. Only supplemental application forms are insurer specific.

Disruption Due to Potential Spike in Pre-Insurance Inspections

Some ERPs expressed concerns that their businesses and customers may be burdened due to the change in their insurers even if the ERPs obtained a voluntary contract with an insurer different from the one to which they were appointed previously. For example, they were concerned that an insurer with whom they secured a voluntary contract would be required to conduct a pre-insurance inspection of vehicles of all of the ERPs' business because it would be "new" to this insurer. ERPs felt that this would be particularly burdensome to them and their clients.

The Division responded to these concerns by initiating a full review of its regulation regarding pre-insurance inspections, 211 CMR 94.00, with an eye towards minimizing disruption to consumers and limiting adverse affects on ERPs during this transition period. We consequently prepared proposed amendments to this regulation to achieve this result and published such amendments with the Secretary of State on May 29, 2009. A public hearing occurred on July 6, 2009, and these changes will be promulgated by the end of July 2009. These amendments will allow insurers greater flexibility to waive such inspections under certain circumstances. I also requested CAR, in a letter dated May 5, 2009, to examine this issue and to attempt to relax these requirements in the residual market, particularly during this transition period. On June 19, 2009, I approved a change to the MAIP rules waiving pre-insurance inspections for existing customers of former ERPs during the remainder of the transition to the MAIP.

Inability to Quote a Premium when an Applicant is Completing an Application

The ERPs said they would be unable to quote their customers the correct premium when the customer is in their office completing an application. They do not have access to all of the different insurers' premiums and did not know whether CAR would be able to provide them automatically with the MAIP premium at such time or whether they would have to attempt to determine, or calculate the MAIP premium, independently. CAR, as of April 2009, is capable of providing the MAIP premium for any particular driver immediately upon request. Agents can provide this premium to customers and advise them that their premium may be lower after the

policy is assigned to a specific carrier and that carrier's voluntary premium is compared to the MAIP rate.⁷

3. Inadequate Notice of Non-Renewal

ERPs claimed that some consumers had not received nonrenewal notices from their insurers, which they believed could heighten the potential for an increase in the number of uninsured drivers. The ERPs maintained that this is particularly likely during a transition in the market when different agents are being assigned to different companies.

The Division promulgated a new regulation entitled *Procedures for Cancellation and Non-Renewal of Motor Vehicle Insurance Policies*, 211 CMR 97.00, effective February 6, 2009, partially to address this issue, among others.⁸ We expressly incorporated a provision mandating that insurers issue non-renewal notices directly to the agent of record at least 45 days in advance of the policy's expiration date, regardless of whether the producer has a voluntary appointment with the insurer during this final transition year to the MAIP. This provision was added to give former ERPs adequate advance notice of non-renewal so that they could find these customers new insurance coverage through the MAIP. Although this is not explicitly required under the law, we determined this to be good public policy during this transition period and very beneficial to the former ERPs. Indeed, this provision affords these ERPs an excellent opportunity to maintain relationships with their customers even if the former insurer non-renews this business. The mandate keeps the former ERP connected to its business and allows the ERP to find new insurance for the ERP's customer, if the ERP wishes to do so.

Designation of Ombudsperson in DOI to Assist ERPs

At a smaller meeting with a few ERPs the day before the meeting in Gardner Auditorium, these ERPs suggested that I identify the name and telephone number of one contact person within the Division to whom they could direct all of their questions and concerns. I agreed and, the next day at the Gardner Auditorium meeting, provided everyone with the name and direct telephone number of one of the attorneys in the Division.⁹ I again provided this information to

⁷ The final premium could be the same as the MAIP premium quoted at the time of application or lower. The Lane-Bolling Amendment, discussed more thoroughly *infra*, mandates this result.

⁸ It was not clear whether the ERPs were aware of this new regulation.

⁹ I added a second attorney to this position in mid-May and both individuals have handled the calls and correspondence with the ERPs.

the 14 ERPs who attended our public meeting on May 13th. A total of 19 ERPs reached out to the ombudspersons either through telephone calls or letters. The ombudspersons returned phone calls or provided written responses for each contact. All of the issues raised by these ERPs are subsumed in the issues raised at the May 13th meeting and are discussed more fully below.

VI. MAY 13, 2009 MEETING WITH ERPs AT THE DIVISION OF INSURANCE

The Division held a public meeting on May 13, 2009, for all former ERPs and insurers, at which I presided. The members of my staff who work on automobile insurance issues also attended. We sent an invitation to each of the former ERPs that had not obtained a voluntary contract at such time and who either had requested a meeting with me or who had contacted the Division's ombudspersons. We also published a notice of the public meeting on our public website on May 1, 2009. We hired a court reporter to transcribe the meeting and had a sign-in sheet to record the identity of all attendees.

Fourteen, or approximately 15% of the remaining 96 former ERPs at that time, attended this meeting. Many of the insurers writing private passenger automobile insurance in Massachusetts also attended. One elected official, Mayor Denise Simmons of Cambridge, attended in her capacity as an ERP. No other elected official attended the meeting. I invited executives from MAIA to participate and representatives from CAR in the event that any of the former ERPs had procedural questions. I also asked the CAR representatives to follow up with any miscellaneous issues that were raised during the meeting that it could remedy. In short, we put all of the interested and relevant parties together in one room and listened to the ERPs' issues and questions.

Many ERPs stated that they were not opposed to managed competition or the MAIP, and, indeed, some support both new systems. Their general concern was that they felt that they were being adversely impacted by some of the changes and that such impact was unfair. Some perceived that they were being "targeted" or "discriminated" against in connection with this reform.

The issues that these ERPs raised, some of which I also had heard at the Gardner Auditorium meeting, included¹⁰: (1) increased burden and commitment of resources to obtain a

¹⁰ Some former ERPs spoke to other, broader issues regarding managed competition, but those issues are not addressed in this Report. This Report is limited to the difficulties that the ERPs face in obtaining voluntary contracts, as prescribed in the Act.

voluntary contract; (2) the prior insurer's non-renewal of previously written business and subsequent voluntary writing of such business at the exclusion of the ERP; (3) a potential increase in the number of uninsured drivers; (4) a potential increase in the population of the residual market; (5) an inability to get a voluntary contract because insurers do not want to write in that specific geographic location or because they are "discriminatory" towards that particular population; (6) higher down payments in the MAIP that customers cannot afford and that disadvantage ERPs as compared to producers with voluntary contracts; (7) the administrative burden of requiring the agents to obtain copies of licenses at the time of application rather than relying exclusively on a Registry of Motor Vehicle ("RMV") check; (8) an inability to quote an actual premium at the time of the application, including calculating the down payment off of the MAIP premium; (9) the general administrative burden associated with writing all non-renewals in the MAIP rather than allowing the former ERPs to "roll" their books of business automatically into the MAIP; and (10) delinquent commission payments.¹¹

1. ERPs should make their books of business more attractive if they want voluntary contracts

The previous residual market system "guaranteed" ERPs their business and employment under almost all circumstances. An insurer had to accept the entire book of business of an appointed ERP regardless of whether it was rife with high-loss business or rich with profitable, low-loss business. The insurer could choose to cede a particular policyholder in such book to the residual market for a fee, but all of the ERP's business remained with that insurer (at least on paper) and intact in that ERP's book.

The ERPs now must confront the challenges that face all other agents---an insurer can choose not to give an ERP a contract. The ERP must now learn to secure a voluntary contract with an insurer by improving its book of business. It no longer has a guaranteed right to a contract and must work to make its book attractive to insurers.

An ERP can continue in business, however, even if it does not obtain a voluntary contract with an insurer. Its business will be placed in the MAIP and assigned to various insurers, who will be required to pay the ERP the commissions associated with this business. The ERP will

¹¹ Some singular issues also were raised by a couple of the ERPs that were unique to those ERPs. For example, one ERP stated that he could not persuade his former insurer to provide him with a list of his loss ratios. Division staff worked with the insurers to assure that these miscellaneous issues were remedied promptly.

have to work in a different paradigm and will have to learn to work with numerous different insurers, but can continue to service its customers. Consumers will continue to be able to obtain insurance. And, in the meantime, the ERP can continue to shop its book to other insurers with the hope of securing a voluntary contract.

2. Non-renewed business written voluntarily by the insurer to the exclusion of the ERP

Many ERPs stated that one of their greatest concerns stems from insurers' non-renewal of their customers' policies. The ERPs began to see an increase in the number of non-renewals in mid-February as April 1, 2009, the date for the full implementation of the MAIP, approached. Insurers' ability to non-renew policyholders, however, is a guaranteed right under the law, provided it is not done for discriminatory, or other prohibited reasons. While voluntary agents are accustomed to handling non-renewals in all lines of insurance, this practice is foreign and particularly challenging for ERPs. The issue of non-renewals triggers several different, but related issues.

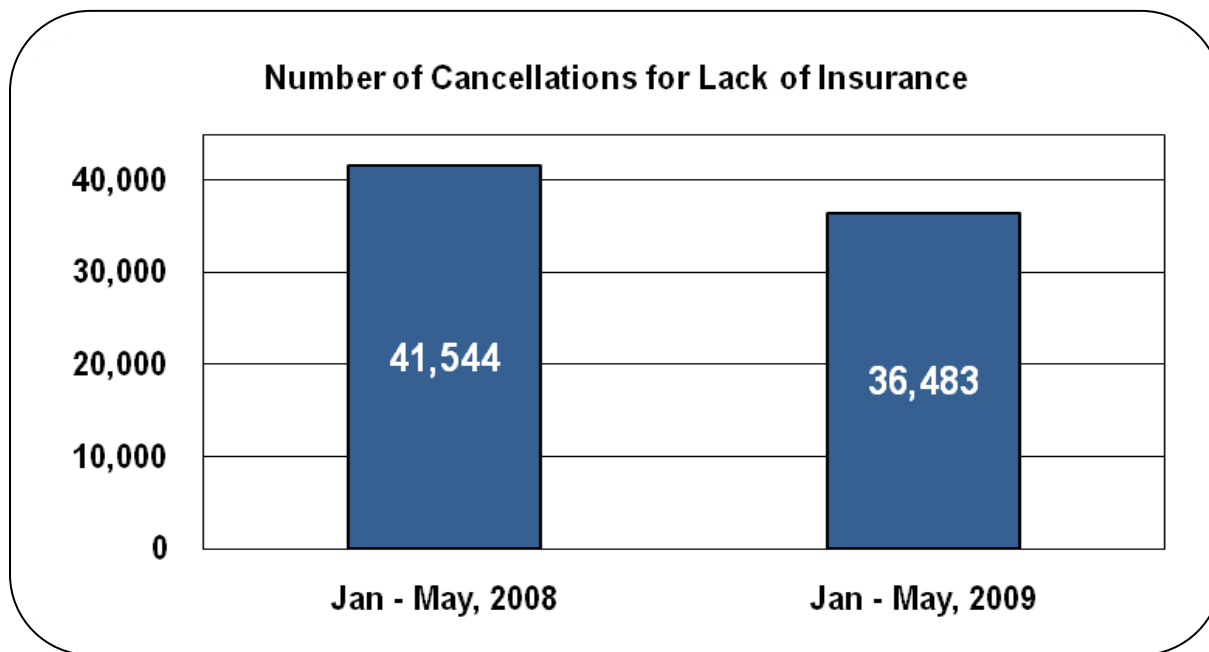
Some of the ERPs stated that a couple of insurers who non-renewed the ERP's customers subsequently contacted these customers and offered them policies directly to the exclusion of the ERPs. These ERPs came to this conclusion after talking with some of their former customers. They stated that some of the insurers informed the ERPs' customers that they had been non-renewed but that they would offer them new policies. ERPs were excluded from these transactions, according to the ERPs. The ERPs, consequently, lost their relationship with their former customers and the right to a commission for such business. I was not provided specific data in this regard and I cannot determine whether this practice is occurring and, if so, at what level. I will, however, keep alert to this potential problem and will respond accordingly.

3. Increases in the non-renewal business resulting in more uninsured drivers

Some ERPs speculate that the number of uninsured drivers is increasing due to the uptick in non-renewals during this transition period. They believe that some of their former customers who were non-renewed are driving uninsured, rather than seeking insurance through a different agent or directly from an insurer. They suspect this may be occurring because these former customers may not have been notified that they were non-renewed by their insurer or may not have understood that they needed to do something affirmative in the wake of receiving a notice of non-renewal.

Some of the ERPs have tried to locate these non-renewed customers unsuccessfully to inform them of the non-renewal and to assist them in finding other insurance. The ERPs generally believe that the increased number of non-renewals is causing the purported increase in the number of uninsured drivers because they have not heard from these former customers and have been unable to talk with them. One ERP stated that when he ran reports on the RMV system, he determined that some of his former customers had not obtained insurance from another insurer.¹² He concluded that these former customers were driving without insurance. No one provided me with specific names or numbers. An increase in the number of uninsured drivers is a serious issue, however, and would be a significant departure from our success of having the lowest number of uninsured drivers in the country. I prompted my staff to follow up on this claim and to contact the RMV to ascertain whether more drivers were operating motor vehicles without insurance.

We requested and received data from the RMV on insurance cancellations for non-payment of insurance premiums for the past 18 months. The data reflects a decrease of 4,701 uninsured drivers in 2009 as compared to the first five months of 2008. Massachusetts has bested its already enviable statistics and the number of uninsured drivers in Massachusetts continues to decrease during our transition to the MAIP and managed competition.

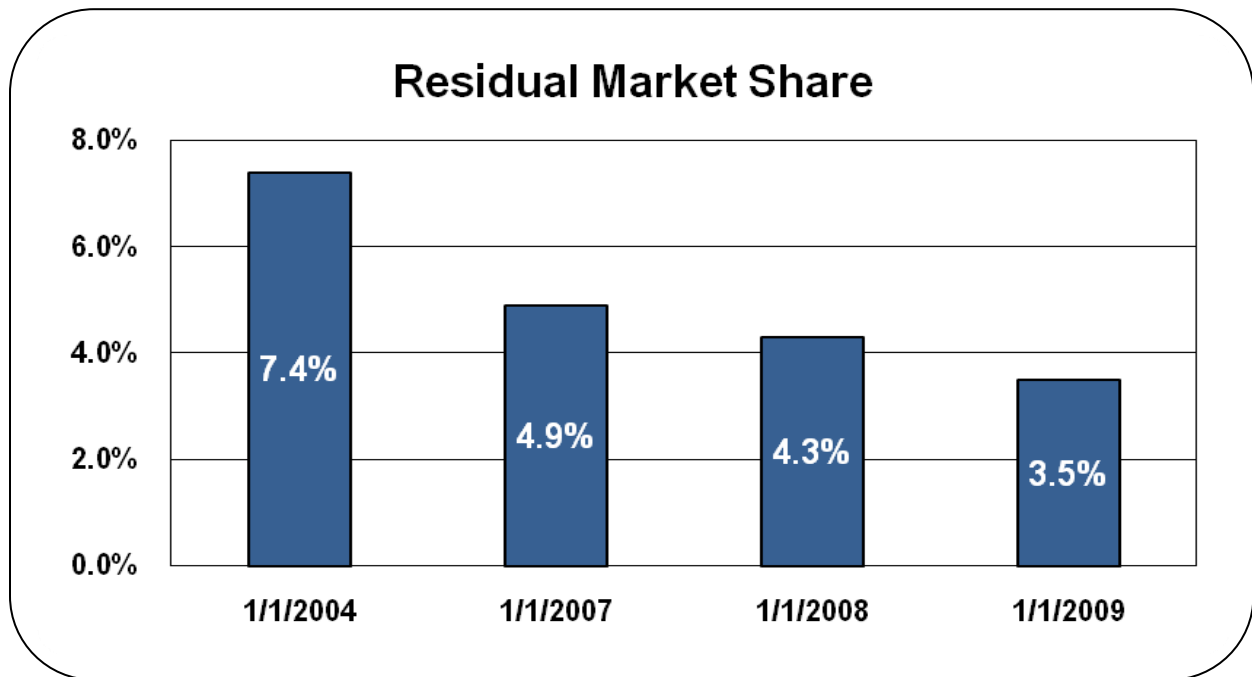


¹² There may be a brief reporting lag to the RMV, which may have created the perception that these former customers were driving uninsured.

4. Increase in the Population in the Residual Market

Some former ERPs claim that because they do not have voluntary contracts, their books of business will be placed in the MAIP, thereby enlarging the residual market. A few ERPs suggested that this may occur even if they ultimately obtain voluntary contracts as insurers likely will not write all of the ERPs' business but rather will reject a material portion of it, thereby forcing it into the MAIP. They believe this will occur because the remaining ERPs' books may be riskier than other business that was written earlier by the insurers.

In the earliest days of the reform of our residual market when it comprised approximately 7.4% of the entire market, the Division undertook aggressive actions to decrease the size of this market for the express purpose of paving the way for the MAIP. These actions were successful and the residual market population decreased from 7.4% in 2004 to 3.5% on January 1, 2009---the lowest in decades.¹³



The Division is particularly sensitive to this issue as a small residual market is one of the fundamental goals of managed competition. Coverage in the MAIP is a “one-size-fits all” model, which does not dovetail well with a competitive market in which consumers should have

¹³Additional decreases in the size of the residual market have continued during the first quarter of 2009.

numerous choices in the voluntary market and residual markets should be very small. The Division will continue to monitor this important issue closely.

5. Desire of Insurers not to Write in Certain Geographic Locations or to “Discriminate” against Certain Populations

A few ERPs stated that they were unable to obtain voluntary contracts because insurers did not want to write business in the geographic areas that they service.¹⁴ A couple speculated that some insurers were “discriminating” against certain populations that they service. These few allegations were similar to ones raised at the March 11th public meeting.

No ERP provided any details or facts to support these claims. Regardless, the Division takes such claims very seriously and tracked the geographic locations of those former ERPs who obtained voluntary contracts and compared them to those who had not. Only 23% of the ERPs in the urban areas did not have voluntary contracts as of May 13th. The data supports the conclusion that insurers have provided voluntary contracts to former ERPs regardless of where they are located.

6. Down Payments in the MAIP

The ERPs stated that the down payment premiums required in the MAIP for new and renewal business are higher than the various down payment premiums that insurers charge in the voluntary market. Some of these ERPs claimed that a customer of an agent who has a voluntary contract may not have to pay any down payment premium at the time of his policy renewal because the insurer has written that business previously. This contrasts with an ERP’s business, which will be assigned to various insurers and treated as “new” business by most of these insurers. These differences adversely affect the ERPs and their customers. They also could motivate some of the ERPs’ customers to transfer their business to such agents with voluntary contracts, according to the ERPs.

The down payment premium requirement for new business in our residual market was historically 30%. CAR reduced it in July 2008 under my deemed approval, from 30% to 25% for all new business assigned to an insurer and 20% for all renewal business. I asked CAR to review this issue again in May and, on June 19, 2009, I approved changes to the corresponding

¹⁴ The business locations of some ERPs are different from the neighborhoods in which their customers reside. For example, one of the remaining ERPs has a business location in Rhode Island although his customers presumably are located in neighboring Massachusetts communities.

MAIP Rule to reduce down payments from 25% to 20% for certain ERP business that constitutes “new” business to that particular insurer to whom it has been assigned. This should allay considerably many of these ERPs complaints regarding this issue, although I understand that a handful of ERPs seek a further rule change mandating no down payment premiums in the MAIP. This is rarely offered even in the voluntary market. Many insurers require down payments for new business in all markets. The amended MAIP rules provides for down payment premiums that now are competitive with the same down payment premiums insurers require in the voluntary market.

7. MAIP Rule Requiring Agents to Review Licenses of Customers Prior to Placing the Business in the MAIP

Several ERPs complained that a certain MAIP rule unduly burdens them because it requires them to seek copies of drivers’ licenses for those operators who are completing applications for the MAIP. Copies of drivers’ licenses for these individuals are required because insurers to whom the individual will be assigned consider this to be “new” business and wish to ensure that the person applying for the insurance is the actual person who is licensed to drive. The ERPs claim that this is unnecessary as they already must check the RMV’s records to ensure that the applicant and any other listed operator are licensed to drive. Because the ERPs have a much larger percentage of business in the MAIP, they feel a disproportionate burden as compared to their colleagues who have voluntary contracts with insurers and need not do likewise, unless the insurer specifically requires it.

The verification of a driver’s license is the critical factor to reduce the potential for fraud. The RMV’s records are the most current and represent reliable data. Accordingly, and based on these ERPs’ comments at the May meeting, I approved an amendment to the respective MAIP rule on June 19, 2009, to eliminate this requirement, unless the operator is from out-of-state or out-of-country.

8. Inability to Quote an Actual Premium at the Time of a Customer’s Application

Many ERPs are frustrated with the inability to quote a definitive premium when a customer completes an application for assignment in the MAIP. Based on many of the comments from the March 11th meeting with the agents, the Division worked with CAR to facilitate and expedite the automatic quote system for MAIP rates. By April 2009, CAR had accomplished the task of assuring that it could quote the MAIP premium automatically to an applicant to the MAIP at the time of application. Some ERPs, nonetheless, expressed a desire

also to be able to quote the premium of the insurer to whom their customer will be assigned at the time of application. Unfortunately, this cannot happen due to some of our laws and the limitations on current technology.

One of the primary complications in this process is the effect of the Lane-Bolling Amendment.¹⁵ The Lane-Bolling Amendment mandates that every applicant to the residual market receive the lesser of the insurer's premium charge in the voluntary market for that specific risk or the premium charge offered in the residual plan (the MAIP). M.G.L. c. 175, § 113H(D). The MAIP premium currently is furnished to the ERP automatically when the customer is in the ERP's office. The insurer's premium is not available at such time. CAR's systems must determine which insurer is next eligible to receive an assignment and must complete that process. CAR notifies the insurer of this assignment and communicates the applicant's information to the assigned insurer. The insurer then must verify all of the information in the application and, ultimately, determine the premium for this applicant as if it were written by such insurer in the voluntary market. The insurer then must apply the lower of its voluntary premium and the MAIP premium, as required under the Lane-Bolling provision of M.G.L. c. 175, § 113H, and communicate this premium to the agent. The ERPs would not be burdened by this process if there were no Lane-Bolling Amendment. The process would be simple and streamlined. The effect of this law, however, results in this complicated rate analysis and comparison and a lag in data.

The ability to quote only the MAIP premium at the time of application to the MAIP also troubles some of the ERPs because, in some instances, it may result unnecessarily in a higher down payment. ERPs only can use the MAIP premium from which to calculate the necessary 20 – 25% MAIP down payment as the potential voluntary premium is not available at such time. The initial calculation and the corresponding down payment are correct if the policyholder

¹⁵ The use of the term "Lane-Bolling Amendment" in this Report refers to the language in M.G.L. c. 175, § 113H(D) providing that "The premium charges filed by or on behalf of the plan shall provide that such premium charges for all vehicles rated in accordance with the Massachusetts Private Passenger Automobile Insurance Manual and all other nonfleet private passenger vehicles shall not exceed the premium charges which would be used by each risk's servicing carrier for that risk if such risk were not insured in the plan..." This premium comparison concept initially was added to M.G.L. c. 175, § 113H by Section 17 of Chapter 241 of the Acts of 1983, and subsequently was amended to the current wording by Section 42 of Chapter 273 of the Acts of 1988.

ultimately ends up with the MAIP premium. If the assigned insurer's voluntary premium proves to be less than the MAIP premium for that specific risk, however, the customer would have paid a higher down payment based on the higher MAIP premium.

The limitations, however, are largely attributable to the laws requiring such a rate comparison and application. Indeed, this was one of the additional reasons why I approved a reduced down payment premium of 20% in the MAIP for all non-renewal business of ERPs on June 19, 2009.

9. "Rolling" ERPs' Books of Business

Some ERPs expressed a desire to "roll" their books of business directly into the MAIP. The "book roll" procedure exists in the voluntary market and is used when an agent has one or more voluntary appointments and its relationship with one of its insurers is terminated. The agent moves its customers from the previous insurer to one of its other insurers. The second insurer issues a replacement policy directly to the policyholders when their policies are expiring as if it had been the original insurer. The policyholders typically are not formally notified of the change in insurers and need not sign any new forms or provide additional information to the second insurer in many circumstances unless the policyholder asks to make changes to the policy.

The ERPs would like to treat all of their non-renewal business in the MAIP in similar fashion. They would like to prevent all insurers from issuing non-renewal notices to their customers and be allowed to place all of their business in the MAIP. Their customers would be no wiser that they have been non-renewed and assigned to another insurer in the MAIP. They would receive renewal notices from the assigned insurer only after their policy was set to expire. They would not have to complete the MAIP application, would not have to sign any documents, and they would not have to issue down payment premiums as new business typically is required to do.

A "book roll" of ERPs' business into the MAIP may be favorable to ERPs but it is unfair to consumers. It is important that a consumer understand that his insurer has non-renewed his policy and that he has the option to shop for a new insurer, or have his agent shop on his behalf, if he wishes to remain in the voluntary market. Consumers finally can assert meaningful choice under managed competition for the first time in at least 30 years. They can compare insurers'

numerous products, fees and rates to determine the best choice for them. A quiet and seamless “roll” into the MAIP of thousands of consumers would eclipse important rights of consumers.

A “book roll” also may result in higher premiums for many customers and may run afoul of the Lane-Bolling Amendment. Insurers assigned to this business will be unable to price this business accurately and to meet the constraints of the Lane-Bolling Amendment because they will not have been given any information upon which to rate it other than the previous insurer’s premium. Coverage in the MAIP is not identical to coverage in the voluntary market, where options abound, and the premium of the previous insurer may have been based upon very different coverages. Consumers may have no other choice but to pay the MAIP premium, which often is higher than a rate in the voluntary market, thereby restricting consumers’ rights to shop their policies in the voluntary market if ERPs are permitted to “roll” their entire books of business into the MAIP.

Finally, a “book roll” would not educate the assigned policyholders that they have been placed in the residual market. Notification is an important element in improving risky drivers’ behavior because drivers who are educated about their risky behavior will strive to improve their habits.¹⁶

10. Delinquent Commission Payments

Several ERPs stated at the May 13th meeting that insurers are delaying the issuance of commission checks. This is particularly troubling during this transition period when ERPs are facing other financial hurdles associated with the transition to the MAIP and managed competition.

CAR, partially in response to such concerns, reviewed these issues and developed formal Performance Standards, which were approved by the CAR Governing Committee on June 3, 2009. The insurers, as “Assigned Risk Companies” in the MAIP, will be required to follow these standards. One performance standard entitled “Commissions” addresses this exact issue. An insurer is required to pay commissions to the producer of record for the business placed in the MAIP “no less frequently than monthly and shall be paid within 15 calendar days after the close of the month in which the commission was credited to the producer’s account.” The

¹⁶ See *Commissioner of Insurance v. Commerce Ins. Co.*, 447 Mass. 478 (2006) (commissioner has authority to inform consumers about their placement in the residual market and their corresponding risky behavior as part of an effort to improve their driving behavior)

Performance Standards additionally provide a process for agents to file grievances in the event that the agent believes that the insurer has failed to comply with any of the Performance Standards, including the Commissions standard. These Performance Standards should remedy the delinquent commission issue.

VII. DIVISION'S OUTREACH TO ALL REMAINING ERPs

Eighty-four (84) ERPs remained without voluntary contracts as of June 8, 2009. On that date, Division staff initiated an individual outreach to survey the ERPs.¹⁷ My staff telephoned each of the ERPs to talk with them individually about why they believed they had not secured voluntary contracts and what additional measures we could take to help them. Division staff spoke with 71 of these ERPs and left messages for 11 ERPs. Two of the ERPs were unreachable. We learned that three of these former ERPs had secured voluntary contracts but that this information had not yet been communicated to CAR. Two additional ERPs had secured such contracts during this outreach. Seventy-six (76) ERPs remained by the time we completed our individual outreach.

The majority of these ERPs restated what had been communicated to me at the March and May public meetings and are detailed *infra*. Some ERPs raised a few new issues, or variations on previous concerns, that are detailed below. Importantly, my staff told some of the ERPs about recent changes to the MAIP rules about which these ERPs were unaware. Indeed, after the completion of the outreach, Division staff again contacted the ERPs who had complained about specific issues that were remedied by my approval of certain corresponding changes to the MAIP Rules on June 19, 2009.

New Issues or Variations:

Agency Consolidators Playing a Role in this Transition

Agency consolidators, or “aggregators,” are playing an increasingly active role in this transition. Two major companies are marketing their services to agents and former ERPs to assist them during this process. They aim to help smaller agencies to secure voluntary contracts with insurers by helping the agencies to “clean” their books of business and to make their books more attractive to insurers.

¹⁷ We owe special thanks to our two summer legal interns, James Cormie of Boston University School of Law and Jason Elliott of Northeastern University School of Law, who made all of these outreach telephone calls.

The aggregators additionally consolidate agencies' businesses to remedy potential problems as to their low volume of business. The aggregators also attempt to secure policies in the voluntary market for a block of the ERP's book of business with insurers through whom the aggregators have voluntary contracts. This is not always successful but it does provide another option for agents. It allows the ERPs to secure policies in the voluntary market on behalf of their clients even without a voluntary contract with an insurer. It also enables the ERPs to quote the insurer's voluntary premium and to calculate a down payment based on that premium. Although the consolidators charge a percentage of the ERP's commission from the insurer (averages range from 20 – 35%) based on the service provided, some ERPs claimed that these groups "saved" their businesses. Some ERPs are only vaguely aware of these operations and are under the mistaken impression that they would have to give up their entire books under these arrangements or pay fees much higher than those actually charged for their services. Division and CAR staff continue to work with these ERPs to help them understand this option.

Difficulty in Obtaining a Voluntary Contract with a Low Volume Business

Several former ERPs stated that they have been unable to secure voluntary contracts despite the fact that they do not have high loss ratios. They believe this is attributable to the fact that they have low volume businesses and insurers are not interested in investing in them for such nominal returns. Division staff spoke with a few insurers who confirmed that low volume books of business are less attractive to insurers than thriving or growing businesses, regardless of the loss ratios of these ERPs. This financial reality, however, makes it difficult for ERPs with such books to secure voluntary contracts. The ERP is left with the option of merging the ERP's business with another agency to create a larger, and more attractive agency (provided the loss ratios are not too high), selling his agency, placing his customers in the MAIP, or soliciting the assistance of one of the aggregators discussed *infra*.

Nonrenewals of Clean in Three Due to Non-Clean in Three of Deferred Operator on the Policy

Some ERPs stated that there is an issue with deferred operators and the application of the "clean-in-three" rule.¹⁸ The deferred operator is an additional driver on a private passenger

¹⁸ The "clean-in-three" rule refers to the MAIP transition rule that prohibits insurers from non-renewing a policy when the operators' driving record is free of at-fault accidents or traffic violations in the three years preceding the policy's effective date.

automobile insurance policy. The ERPs explained that if the deferred operator is not “clean-in-three” an insurer may non-renew the whole policy even if the principal operator is “clean-in-three.” This affects the ERP’s business for the same reason that the other non-renewal issues affect it. These customers may choose another agent, one with a voluntary contract, to find an insurer to write this business in the voluntary market where lower down payments may be required.

The Division, on April 3, 2009, asked CAR to resolve this issue. Committee members discussed it, but were unable to make the necessary adjustments. Division staff followed up with a letter to CAR on June 26, 2009, prohibiting the practice complained about.

ERPs’ Further Suggestions

Some ERPs offered further suggestions to assist in their transition to the MAIP. They stated that it would be ideal if the Division, or CAR, could create a bundle, or package, of insurers’ rates electronically so that the ERPs could quote competitive rates while their customers are completing applications in their offices. This suggestion is not feasible. No such product exists and insurers retain proprietary rights to their pricing models.

ERPs also suggested that the MAIP rules should allow for greater credits to motivate insurers to take business out of the residual market. Credits already are available and CAR is reviewing this issue further as the market matures. CAR will furnish the results of its review and recommendations as to additional credits in the rules are forthcoming.

Some ERPs also advocated for a continued appointment system for an additional six to twelve months allowing them greater time to clean their books and to prove to the insurers that they have good businesses. This option may be favorable to a few of the remaining ERPs but also could result in major inequities in the market. The previous residual market system with agency appointments ended on April 1, 2009. Insurers, and many former ERPs who have secured voluntary contracts, or agreed to merge or sell their agencies, have made strategic decisions based on this fact and this timeline. It would not be equitable to change these rules after so many changes already have been made based on such rules. Additionally, a reassignment of the remaining ERPs would have to be undertaken based on a study of each insurer’s current book of business. These remaining former ERPs would likely not remain with their previous insurer as each company’s share of the market has dramatically changed during

the past 15 months of transition. This likely would cause greater disruption to the market and to consumers than the current plan.

VIII. INSURANCE PREMIUM INSTALLMENT PLANS

Insurance premium installment plans (“installment plans”)¹⁹ are fixtures in both the voluntary and the residual markets for PPA insurance. An installment plan allows a policyholder to pay the premium in set amounts at fixed intervals over the life of the policy, plus a finance charge.

The MAIP rules mandate that insurers offer installment plans to policyholders in the residual market. Insurers must allow policyholders the option of issuing up to 10 installment payments of equal amounts, including the down payment, over the life of the policy. A flat \$6.00 finance charge is charged for each installment payment. This rule amendment became effective in July 2008, and expanded the previous rule that provided that insurers only had to offer up to seven installment payments. The current rule is much more consumer-friendly.

Insurers in the voluntary market decide the nature of the installment plan they wish to offer their policyholders. This is one of the means through which they compete. The majority of insurers allow up to 10 installments of equal amounts. A large number also allow a policyholder to make monthly payments provided such payments are made through electronic fund transfers. The finance charges vary from \$0 - \$8 per installment payment, with the majority falling in the \$4 - \$6 range. The Division compares all of the companies’ finance plans and the finance charges in two charts on its public website. The Division also provides detailed information regarding these issues, insurer by insurer, on its website.

¹⁹ We interpret the phrase “insurance premium finance plans” to mean “premium installment payment plans” rather than “finance plans” which fall under the regulation of the Division of Banks pursuant to Chapter 255C. Chapter 175, Sec. 162B, an insurance statute, does provide that agents may accept installment payments through finance instruments and that these instruments “shall be made under rates, charges and regulations established after public hearing, as equitable and nondiscriminatory, by a board consisting of the attorney general, the insurance commissioner and the commissioner of banks or their respective designees.” The rates and regulations may be found at 955 CMR 1.00 and 955 CMR 2.00. Generally, however, finance plans are permissible in both the voluntary and the residual markets. MAIP rules provide that an insurer that writes an assigned risk from the MAIP must “[c]omply with the terms and conditions of premium finance notes and/or agreements submitted to the [assigned risk company] on behalf of applicants for insurance, by the agent or by a premium finance company licensed under the laws of the Commonwealth of Massachusetts.”

IX. REQUISITE DOWN PAYMENT PLANS

Down payment plans vary between the residual and the voluntary markets. The MAIP rules govern the requisite down payment premium that a policyholder must make when assigned to a different insurer, as new business, in the residual market. They also dictate the down payments if the policyholder is renewal business. These specifics are discussed extensively *infra*. I have approved the relaxation of these down payments two times in the past year months to assist consumers who may find themselves in the MAIP and to ease the burdens that the ERPs are facing with this business in the MAIP. The current rules regarding down payments are, in many instances, competitive or less than the down payments that the individual insurers currently charge policyholders in the voluntary market.

Insurers are permitted to set the down payment that they require for all new and renewal business in the voluntary market, provided it does not exceed the 30% cap articulated in M.G.L. c. 175, § 113E. The insurers use this tool as an additional method of competing among themselves. Some insurers require the maximum down payment of 30%, while others only require down payments in the range of 20 – 25% for new and renewal business. A small number of insurers require down payments in amounts less than 20%.

The Division provides a detailed chart comparing the insurers' requisite down payments in the private passenger automobile market. This chart also compares the various installment payment plans required by each of the insurers. This chart is available on the Division's public website.

X. CONCLUSION

I am very pleased with the results of the MAIP implementation to date. The 500 former ERPs who obtained voluntary appointments in the past two years only enhances the public perception of the value of the independent agent. Division staff, CAR and MAIA all have worked tirelessly to ensure as smooth a transition as possible. I believe that all of the changes made to the MAIP in the past six months will facilitate a smoother transition to a full assigned risk plan without compromising consumers' rights to obtain quality service and coverage at a fair price. The Division will continue to work with the remaining former ERPs to assist them in obtaining voluntary contracts or to transition to operation in the MAIP.

July 13, 2009

Nonnie S. Burnes
Commissioner of Insurance